

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Amendment of Parts 20 and 24 of the )  
Commission's Rules -- Broadband )  
PCS Competitive Bidding and the )  
Commercial Mobile Radio Service )  
Spectrum Cap )

WT Docket No. 96-59

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Amendment of the Commission's )  
Cellular/PCS Cross-Ownership Rule )

GN Docket No. 90-314

**COMMENTS ON PETITION FOR RECONSIDERATION  
OF BELL SOUTH CORPORATION, AND  
OPPOSITION TO PETITION FOR RECONSIDERATION  
OF OMNIPONT CORPORATION**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys and pursuant to 47 C.F.R. § 1.429(f), hereby submits comments on the petition for reconsideration filed by BellSouth Corporation ("BellSouth")<sup>1/</sup> and opposes the petition for reconsideration filed by Omnipoint Corporation ("Omnipoint")<sup>2/</sup> of the Commission's Order in the above-captioned proceeding.<sup>3/</sup>

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<sup>1/</sup> Petition for Reconsideration of BellSouth Corporation (filed July 30, 1996) ("BellSouth Petition").

<sup>2/</sup> Petition for Reconsideration of Omnipoint Corporation (filed July 31, 1996).

<sup>3/</sup> See Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order FCC 96-278 (released June 24, 1996) ("Order").

**I. If the Commission Adopts BellSouth's Request To Exclude Non-Covered SMR Operations from the Spectrum Cap Rule, it Must Also Exclude Data Services Provided Over Cellular and Broadband PCS Spectrum**

BellSouth asks the Commission to reconsider its decision to include all specialized mobile radio ("SMR") operations within the scope of the 45 MHz spectrum cap rule.<sup>4/</sup> It argues that the failure to exclude "non-covered" SMR is contrary to FCC determinations that only services that compete or have the potential to compete with cellular and broadband PCS should be treated commensurately with these services. BellSouth contends that licensees of non-covered SMR services, "including those licensees which offer only data services," do not compete with cellular and broadband PCS services.<sup>5/</sup>

While BellSouth's observation that non-covered SMR operators do not serve the same two-way voice markets as cellular and broadband PCS licensees may be correct, it ignores the fact that the data services provided by all three are essentially the same.<sup>6/</sup> BellSouth's affiliate, RAM Mobile Data USA Limited Partnership ("RAM Mobile"), and Advanced Radio Data Integrated Systems, Inc. ("Ardis"), for instance, offer interconnected mobile data services on the 800 - 900 MHz SMR spectrum, which are viewed by customers as substitutable and competitive with the data services provided by AT&T over its cellular

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<sup>4/</sup> 47 C.F.R. § 20.6(a).

<sup>5/</sup> Covered SMR services do not include "local SMR services offering mainly dispatch services to specialized customers in a non-cellular configuration, licensees offering only data, one-way, or stored voice services on an interconnected basis, or any SMR provider that is not interconnected to the public switched network." 47 C.F.R. § 52.1(c).

<sup>6/</sup> Cf. BellSouth Petition at 10.

spectrum.<sup>7/</sup> Thus, if the Commission grants BellSouth's request, it must also exclude the data services provided by cellular and broadband PCS licensees from the spectrum cap rule. To exempt only non-covered SMR services would contravene the Commission's regulatory parity objectives<sup>8/</sup> and would place cellular and PCS providers of data services at a serious competitive disadvantage.<sup>9/</sup>

## **II. The Commission Should Reject Omnipoint's Request to Reinstate the Cellular/PCS Cross-Ownership Rule**

The Commission's decision to eliminate the cellular/PCS cross-ownership rule and 40 MHz PCS spectrum cap in favor of a single CMRS 45 MHz spectrum cap was entirely justified by the record and sound economic principles. A number of commenters, both large and small, stated that the 45 MHz cap is an adequate check on the power of cellular licensees to influence the broadband PCS market and that "the risks to innovation from erring on the side of restrictive eligibility rules are greater than the risks of increased concentration incurred by erring in the other direction."<sup>10/</sup> As the United States Court of Appeals for the

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<sup>7/</sup> RAM Mobile is directly competing with AT&T for customers with respect to mobile professional, remote monitoring, field service, public safety, and transportation applications. For example, RAM Mobile was awarded contracts over AT&T for data service Roadway Package Service trucks and for Washington Natural Gas meters. Ardis is directly competing with respect to e-mail type services.

<sup>8/</sup> See Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 7996 (1994) ("mobile services will be treated as substantially similar if they compete against each other").

<sup>9/</sup> Garrett v. FCC, 513 F.2d 1056, 1060 (D.C. Cir. 1975); Melody Music, Inc. v. FCC, 345 F.2d 730, 732-733 (D.C. Cir. 1965) (Commission has duty to treat similarly situated entities in a like manner); see also McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365 (D.C. Cir. 1993).

<sup>10/</sup> Comments of the Cellular Telephone Industry Association at 5.

Sixth Circuit noted in the Cincinnati Bell case, "[t]he continued existence of some wireless communications businesses rests on their ability to bid on Personal Communications Service licenses."<sup>11/</sup> To limit cellular licensees to only 10 MHz of PCS spectrum may ultimately leave them "holding the remnants of an obsolete technology."<sup>12/</sup>

Omnipoint's fear that allowing cellular licensees to obtain 20 MHz of in-market PCS spectrum (as opposed to the original 10 MHz limitation) will harm its ability to compete in the PCS marketplace is wholly speculative. As the Commission's analysis of plausible market structures indicates, "the concentration levels under the single 45 MHz spectrum cap would not be higher than the level that would be possible under all three of the existing caps."<sup>13/</sup> Indeed, the imminent competition from three 30 MHz PCS licensees and existing competition from another in-market cellular provider minimizes the possibility that a cellular licensee would be able to reduce wireless competition in a particular market through the purchase of two of the three 10 MHz PCS licenses now being auctioned.

Finally, elimination of the cellular/PCS cross-ownership provision was a rational response by the Commission to the Cincinnati Bell remand. In that case, the Court of Appeals questioned whether the rule actually furthered the congressional goal of ensuring that PCS licenses are disseminated among diverse service providers.<sup>14/</sup> Because the Commission cannot show that the cross-ownership rule is necessary to achieve this objective and because

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<sup>11/</sup> Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752, 764 (6th Cir. 1995).

<sup>12/</sup> Id.

<sup>13/</sup> Order at ¶ 104.

<sup>14/</sup> Id. at ¶ 102 (citing Cincinnati Bell, 69 F.3d at 764).

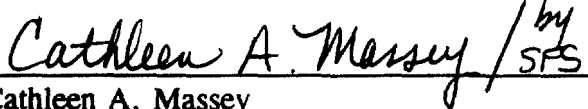
of the likely adverse impact on cellular providers of an arbitrary restriction on license acquisition, the Commission should affirm its decision to retain only a single 45 MHz spectrum cap rule.

### CONCLUSION

For the foregoing reasons, the Commission should grant BellSouth's request to exclude non-covered SMR from the spectrum cap rule only if it also excludes the data services provided over spectrum allocated for cellular and broadband PCS. In addition, the Commission should deny Omnipoint's request to reinstate the cellular/PCS cross-ownership rule.

Respectfully submitted

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August 28, 1996

## CERTIFICATE OF SERVICE

I, Tanya Butler, certify that on this 28th day of August, 1996, I caused a copy of the foregoing "Comments on Petition for Reconsideration of BellSouth Corporation, and Opposition to Petition for Reconsideration of Omnipoint Corporation" to be served by first-class mail, postage prepaid or by messenger(\*) to the following:

  
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